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TO: Office of Petitions

FAX NO: (703) 872-9306

DATE: February 4, 2004

FROM: Debi Conrad

RE: 10/643,142

P&G Reference:

Number of Pages, including this sheet, being transmitted: 3

To Whom It May Concern:

On January 23, 2004 we received in our office the attached Decision on Petition. There is no attorney docket number listed and I have searched our docket for the serial number and inventor but have had no luck in locating it.

I also tried going on to the USPTO web site and search this application number in the status section, but it tells me there is no such number.

I have tried and tried to reach Kenya McLaughlin, but to no avail.

Would someone please either call me at (203) 259-1800 x120 or fax me at (203) 255-5170 and let me know our docket number and the correct application number.

➤ *Please confirm receipt of this transmission*

☐ The original of this facsimile will be sent to you via mail

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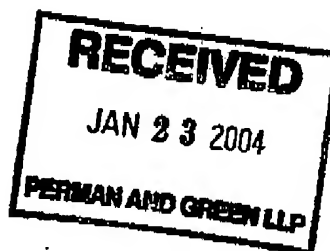
In re Application of

Sheahan, et al.

Application No. 10/643,142

Filed: August 18, 2003

Attorney Docket No.



COPY MAILED

JAN 21 2004

OFFICE OF PETITIONS

DECISION ON PETITION

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This is a decision on the petition under 37 CFR 1.10 filed, October 20, 2003.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.10."

The instant petition was filed to correct what petitioner believed was an incorrect filing date accorded the above-cited application. Petitioner maintains that the correct filing date for the application should be August 12, 2003, not the currently accorded date of August 18, 2003. In support thereof, petitioner filed a copy of the Express Mail label EV89259475US showing a "date-in" of August 18, 2003.

Section 1.10(a) of the Title 37 of the Code of Federal Regulations indicates that correspondence received by the Patent and Trademark Office that was delivered by Express Mail will be considered filed in the Office on the date of deposit with the United States Postal Service. Where there is a discrepancy between the date of deposit as shown on the Express Mail label and the filing date accorded the correspondence by the Office, 37 CFR 1.10(c) provides that an applicant may petition to have the Commissioner accord the correspondence a filing date as of the "date in" on Express Mail label. In accordance with 37 CFR 1.10(c), a successful petition must:

- (1) be filed promptly after the person becomes aware that the Office has accorded or will accord a filing date other than the USPS deposit date;

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2) [provide] the number on the Express Mail mailing label was placed on a paper(s) or fee(s) that constituted the correspondence prior to the original mailing by Express Mail; and

(3) ... include a true copy of the Express Mail mailing label showing the date-in and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition does not satisfy the requirements of item (2) above.

Relative to item (2), no paper was found among the application or petition papers that provided the number of the Express Mail label that constituted the correspondence prior to the original mailing. Petitioner must establish that the Express Mail label number EV286259475US was on the application transmittal form, cover sheet, or other paper allegedly filed with the original application papers on August 12, 2003. The space provided for the Express Mail number on the application transmittal form filed with the application papers was blank. In order to get the filing date of August 12, 2003, petitioner must provide a paper filed with the original application papers that cited the Express Mail label EV28625975US.

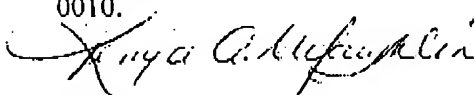
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions